Decision and Order No.: 799

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of [redacted] by School District of Onalaska Board of Education	DECISION AND ORDER Appeal No.: 20-EX-09

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(c) from the order of the School District of Onalaska Board of Education to expel the above-named pupil from the School District of Onalaska. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on September 16, 2020.

In accordance with the provisions of Wis. Admin. Code § PI 1.04(5), this Decision and Order is confined to a review of the record of the school board hearing. The state superintendent's review authority is specified in Wis. Stat. § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Pupil Expulsion Hearing", dated November 20, 2019, from the Superintendent of the School District of Onalaska. The letter advised that a hearing would be held on December 3, 2019, that could result in the pupil's expulsion from the School District of Onalaska through his 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged

in conduct while at school or while under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that "[o]n or about November 14, 2019, [the pupil] told one or more students not to come to school on November 26th, in circumstances where he acknowledged that he might shoot up the school if he had reason to do so."

The hearing was held in closed session on December 3, 2019. The pupil and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented witnesses and evidence concerning the grounds for expulsion. The pupil and his mother were given the opportunity to present evidence, to present their own witnesses, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found that the pupil did engage in conduct while at school which endangered the property, health, or safety of others. Specifically, the board found that the pupil did tell "one or more students not to come to school on November 26th, in circumstances where he also acknowledged that he might shoot up the school if he had reason to do so." The board further found that the interests of the school demanded the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the board, dated December 5, 2019, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday, but provided for conditional early reinstatement if the pupil satisfied – and continued to satisfy – certain conditions and requirements. Minutes of the school board expulsion hearing and a transcript of the hearing are part of the record.

DISCUSSION

The expulsion statute – Wis. Stat. § 120.13(1)(c) – gives school boards the authority to expel a pupil when specific substantive standards are met and specific procedures have been followed. *Madison Metro. Sch. Dist. v. Burmaster*, 2006 WI App 17, ¶ 19, 288 Wis. 2d 771. In reviewing an expulsion decision, the state superintendent is tasked with determining whether the school board complied with the substantive and procedural requisites of Wis. Stat. § 120.13(1)(c). Essentially, the state superintendent must ensure that: the required statutory procedures were followed; the school board's decision was based upon one of the established statutory grounds; and the school board was satisfied that the interest of the school district demanded the pupil's expulsion.

The appeal in this case raises three issues which require consideration. First, appellant challenges the evidence presented at the expulsion hearing. The pupil's mother alleges in her submissions several issues with the evidence presented at the hearing. Primarily, she challenges the sufficiency of the evidence that her son was watching videos of school shootings on district computers. She also argues that any videos about shootings he was watching were simply research into an approved school research paper topic of the 2017 Las Vegas mass shooting. It is critical to note that the misconduct on which the board based its expulsion was not watching videos about shootings, it was the statements made by the pupil that apparently related to the videos. While there may be conflicting evidence regarding both the nature of the videos the pupil watched and whether he watched them at all, it is undisputed that the pupil told other pupils that he would shoot up the school if he was given reason to do so. The pupil admitted this in his testimony at the expulsion hearing and the pupil's mother acknowledged he made such a statement in her first submission in support of the appeal. It is within the school board's

discretion to weigh all the evidence and arguments before it and give weight to each as it deems appropriate. *S.P. v. New Berlin Sch. Dist. Bd. of Educ.*, Decision and Order No. 729 (Sept. 21, 2015). Although a pupil may disagree with the testimony and the board's evaluation of it, it is not grounds to overturn the school board's decision. *Id.*

The pupil's mother also alleges that several people that testified for the district at the hearing either: lied; gave inconsistent statements about the pupil's behavior; or gave testimony that they were not qualified to give. Just as the school board has the authority to weigh the evidence before it, it also has the authority to judge the credibility of witnesses and determine whom to believe when there is conflicting testimony. *Kathleen W. v. Tri-Cty. Area Sch. Bd.*, Decision and Order No. 130 (May 10, 1985); *T.R. v. Adams-Friendship Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 722 (Aug. 29, 2014).

A school board's findings will be upheld if any reasonable view of the evidence sustains them. *Leo P. v. Whitewater Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 351 (Mar. 31, 1998); *D.J. v. Germantown Sch. Dist. Bd. of Educ.,* Decision and Order No. 638 (Apr. 7, 2009). After reviewing the record, I find a reasonable view of the evidence supports the findings and the decision to expel. The pupil's mother has provided, at the hearing and in her submissions, many reasons why the pupil may have made the statement in question. She also challenges whether he had any intent to follow through on his statement. Regardless, it is undisputed that the pupil made the statement that he may shoot up the school if he had reason to do so. It is reasonable that the school board would find this statement constituted conduct that endangered the property, health or safety of others and that it was in the best interests of the school to expel the pupil.

Second, the pupil's mother makes a general argument that the district did not "do right by" the pupil. She argues the district should have taken action to prevent her son from being able to access questionable videos at school and that the district was not bringing issues like chronic absences to her attention. Efforts of the district, or lack thereof, prior to the expulsion action are not within the state superintendent's review. Such review is limited to whether the substantive and procedural requisites of the expulsion statute were met during the expulsion proceedings. Any allegations that the district failed to address a pupil's attendance or prevent him from accessing certain videos at school go beyond the scope of this review. *J.V. v. Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 679 (Apr. 7, 2011).

Third, and finally, appellant argues that the pupil's actions were the result of his disabilities and the school district erred in finding, after a Manifestation Determination meeting, that his actions were not the result of those disabilities. A challenge such as this to a district's special education evaluation procedures is also generally beyond the scope of the state superintendent's review pursuant to the expulsion statute. *R.S. v. Barron Area School Dist. Bd. of Educ.*, Decision and Order No. 417 (June 9, 2000). The state superintendent has consistently held that an expulsion appeal is not the appropriate context within which to challenge a school district's application of special education provisions to a particular pupil. *N.K. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 620 (May 15, 2008) *Daniel O. v. Kenosha Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 704 (June 4, 2013); *R.M. v. Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (Jan. 30, 2014). Specifically, the state superintendent does not have authority in an expulsion appeal to examine the appropriateness of a manifestation team determination. *Brian M. v. Lodi Sch. Dist. Bd. of Educ.*, Decision and Order No. 425 (Oct. 23, 2000). There are separate procedures under the statutes for special education

appeals. *Id.* Any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures.

CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the substantive and procedural requirements of Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [redacted] by the School District of Onalaska Board of Education is affirmed.

Dated this 5th day of November, 2020

Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

APPEAL RIGHTS

Wis. Stat. § 120.13(1)(c)3. specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

Parties to this appeal are:

[redacted]

[redacted]

School District of Onalaska
Attorney Kirk D. Strang
Strang, Patteson, Renning, Lewis & Lacy
660 West Washington Avenue, Suite 303
Madison, WI 53703